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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/815,254

03/31/2004

Ezra Jacques Elie Eric Setton

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11/17/2008

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EXAMINER

ABRAHAM, ESAW T

ART UNIT

PAPER NUMBER

2112

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,254

Applicant(s)

SETTON ET AL.

Examiner

ESAW T. ABRAHAM

Art Unit

2112

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Response to Applicant's argument/Amendment

1. In view of the applicant's argument filed on 02/13/08, The Examiner withdraws 112, 2nd rejections to claims 1, 8 and 31.
2. Applicant's arguments, see Remark, pages 10-16 filed 08/20/08, with respect to claims 1-20 have been fully considered and are persuasive. The rejection under 101, non-statutory to claims 1-20 has been withdrawn. However, the argument to overcome the 101 rejection to claims 21-36 is not convincing since means for storing, means for selecting, means for providing... means for receiving, means for providing feedback and means for decoding are sub modules of the transmitter module and the receiver module as described in the disclosure "**may be a software modules**" (see the detailed rejection below) falls under a broad but reasonable interpretation within a computer software per se or computer listing per se.

Therefore, the Examiner maintains the rejection under **35 USC § 101, non-statutory** for claims 21 and 35 and all claims dependent therefrom.

DETAILED ACTION

3. Claims 1-20 have been allowed.
4. Claims 21-36 remain pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims **31 and 35** are nominally drawn to an "apparatus" comprising "means for storing, means for selecting, means for analyzing" (as in claim 31) means for receiving, means for providing feedback information and means for decoding (as in claim 35) are sub software modules within the transmitter (120) and receiver (140) modules.

The applicant disclosure paragraph 023 teaches that "The transmitter 120 is a module located at a content delivery server to transmit the media content 110 to the receiver 140. The transmitter 120 may be a software module, a hardware circuit, or a combination of both hardware and software. Instant claims 1 and 31 are not limited, however, to any tangible embodiment. The "input/output module, a generator, and a decoder of the apparatus of claim 8 is depicted as boxes comprising "apparatus" or "receiver" 140 Figure 3. The applicant disclosure paragraph 025 teaches "the receiver 140 is a module located at a client to receive the media content stream". The receiver 140 may be a software module, a hardware circuit, or a combination of both hardware and software".

The claim may be read, under a broad but reasonable interpretation, as reciting transmitter or receiver in the disclosure, such as a software module that is not tied to a particular machine ---computer software per se or computer listing per se. *See Manual of Patent Examining Procedure* § 2106.01, heading I (8th ed., Rev. 6, Sept. 2007) ("USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material.") and instant claims 1, 8 and 31 are not

limited to a statutory class (e.g., machine or manufacture), and thus not directed to statutory subject matter. "The four categories [of § 101] together describe the exclusive reach of patentable subject matter. If a claim covers material not found in any of the four statutory categories, that claim falls outside the plainly expressed scope of § 101 even if the subject matter is otherwise new and useful." *In re Nuijten*, 500 F.3d 1346, 1354 (Fed. Cir. 2007). Therefore, thus claims 31 and 35 are non-statutory as these claims are directed toward "software per se".

Claims **32-36** depend from claims 31 and 35 and therefore are also rejected for the same reasons as cited for claims 31 and 35.

6. Claims **21-30** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For example the Applicant's disclosure, paragraph [0074] teaches "The processor readable or accessible medium" or "machine readable or accessible medium" may include any medium that can store, transmit, or transfer information. Examples of the processor readable or machine accessible medium include an electronic circuit, a semiconductor memory device, a read only memory (ROM), a flash memory, an erasable ROM (EROM), a floppy diskette, a compact disk (CD) ROM, an optical disk, a hard disk, a fiber optic medium, a radio frequency (RF) link, etc. The computer data signal may include any signal that can propagate over a transmission medium such as electronic network channels, optical fibers, air, electromagnetic, RF links, etc. The code segments may be downloaded via computer networks such as the internet, Intranet, etc.

As such, the claims are not limited to statutory subject matter since the medium can be a software, hardware or firmware and are therefore non-statutory. Additionally, the claims lack accomplishing a practical application such as producing a useful, concrete tangible result.

Claims **22-27, 29 and 30** depend from claims 21 and 28 and therefore are also rejected for the same reasons as cited for claims 21 and 28.

REASONS FOR ALLOWANCE

7. Claims **1-20** are allowed. The following is an Examiner's statement of reasons for allowance:

Independent **claim 1** of the present application teaches, for example, An apparatus comprising a buffer to store at least a default stream coded by a multiple description (MD) coding and a restart stream coded by a predictive coding, the default and restart streams corresponding to a media content; a selector coupled to the buffer to select a transmit frame from the default and restart streams according to a transmission status, the transmit frame being transmitted to a receiver; and an analyzer coupled to the selector to provide the transmission status based on feedback information provided by the receiver.

The foregoing limitations are not found in the prior arts of record. Particularly, none of the prior arts of record teach nor fairly suggest, "... a buffer to store at least a default stream coded by a multiple description (MD) coding and a restart stream coded by a predictive coding, the default and restart streams corresponding to a media content; a selector coupled to the buffer to select a transmit frame from the default and

restart streams according to a transmission status, the transmit frame being transmitted to a receiver; and an analyzer coupled to the selector to provide the transmission status based on feedback information provided by the receiver". Consequently, claim ** is allowed over the prior arts.

Independent **claim 8** of the present application teaches, for example, An apparatus comprising an input/output (I/O) module to receive a stream having a frame from a transmitter over a transmission path, the frame being selected from one of a default stream coded by a multiple description (MD) coding and a restart stream coded by a predictive coding, the default and restart streams corresponding to a media content; a feedback generator coupled to the I/O module to provide feedback information regarding transmission of the stream to the transmitter; and a decoder coupled to the feedback generator and the I/O module to decode the stream.

The foregoing limitations are not found in the prior arts of record. Particularly, none of the prior arts of record teach nor fairly suggest "an input/output (I/O) module to receive a stream having a frame from a transmitter over a transmission path, the frame being selected from one of a default stream coded by a multiple description (MD) coding and a restart stream coded by a predictive coding, the default and restart streams corresponding to a media content; a feedback generator coupled to the I/O module to provide feedback information regarding transmission of the stream to the transmitter; and a decoder coupled to the feedback generator and the I/O module to decode the stream".

Independent claims **11 and 18** include similar limitations of independent claim 1 and 8 and therefore are allowed for similar reasons.

Dependent claims **2-7, 9-10, 12-17, 19 and 20** depend from allowable independent claims and inherently include limitations therein and therefore are allowed as well.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esaw T. Abraham whose telephone number is (571) 272-3812. The examiner can normally be reached on M-F 8am-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EA

11/13/08

/Esaw T Abraham/

Primary Examiner, Art Unit 2112